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## NOTICE OF ALLOWANCE AND FEE(S) DUE

20792 7590 04/08/2005

MYERS BIGEL SIBLEY & SAJOVEC  
PO BOX 37428  
RALEIGH, NC 27627

[REDACTED] EXAMINER

BLECK, CAROLYN M

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3626

DATE MAILED: 04/08/2005

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,432	01/11/2000	RICHARD S. SURWIT	9025-7	4307

TITLE OF INVENTION: APPARATUS AND METHODS FOR MONITORING AND MODIFYING ANTICOAGULATION THERAPY OF REMOTELY LOCATED PATIENTS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1400	\$0	\$1400	07/08/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

### HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail**

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**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

20792      7590      04/08/2005

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### Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (703) 746-4000, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,432	01/11/2000	RICHARD S. SURWIT	9025-7	4307

TITLE OF INVENTION: APPARATUS AND METHODS FOR MONITORING AND MODIFYING ANTICOAGULATION THERAPY OF REMOTELY LOCATED PATIENTS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1400	\$0	\$1400	07/08/2005

EXAMINER	ART UNIT	CLASS-SUBCLASS
BLECK, CAROLYN M	3626	705-003000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).	2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.
<input type="checkbox"/> Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.	1_____
<input type="checkbox"/> "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.	2_____
	3_____

**3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)**

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent):  Individual  Corporation or other private group entity  Government

4a. The following fee(s) are enclosed:

4b. Payment of Fee(s):

- Issue Fee
- Publication Fee (No small entity discount permitted)
- Advance Order - # of Copies \_\_\_\_\_

A check in the amount of the fee(s) is enclosed.

Payment by credit card. Form PTO-2038 is attached.

The Director is hereby authorized to charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

**5. Change in Entity Status (from status indicated above)**

- a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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09/480,432	01/11/2000	RICHARD S. SURWIT	9025-7	4307
20792	7590	04/08/2005	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			BLECK, CAROLYN M	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 04/08/2005

## Determination of Patent Term Extension under 35 U.S.C. 154 (b) (application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571) 272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/480,432	SURWIT ET AL.	
	Examiner	Art Unit	
	Carolyn M Bleck	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 18 February 2004.
2.  The allowed claim(s) is/are 19-28 (renumbered 1-10).
3.  The drawings filed on 11 January 2000 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
    - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 16.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

  
**JOSEPH THOMAS**  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 3600

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the Supplemental Appeal Brief filed on 18 February 2004. Claims 1-43 are pending.

### ***Response to Appeal Brief***

2. The Examiner indicated in a telephone interview with Applicant on 18 February 2005 that claims 19-28 were allowable. (For reasons see "Reasons for Allowance" below). Applicant agreed on 23 February 2005 to withdraw claims 1-18 and 29-43 from appeal by canceling these claims. MPEP § 1215.03.

### ***Election/Restrictions***

This application is in condition for allowance except for the presence of claims 44-73 to an invention non-elected with traverse in the reply filed on 3 January 2003. Applicant agreed to cancel claims 44-73 in a telephonic interview on 24 February 2005.

## **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Needham Boddie on 24 February 2005.

The application has been amended as follows:

Claims 1-18, 29-43, and 44-73 have been cancelled.

### ***Allowable Subject Matter***

4. Claims 19-28 (renumbered 1-10) are allowed. The following is an Examiner's statement of reasons for the indication of allowable subject matter: Claims 19-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (6,302,844) in view of Brown (6,161,095), the Applicant's admission in the background of the invention of the present application (09/480432), and Surwit et al. (6,024,699). Walker, Brown, and the Applicant's background of the invention failed to expressly disclose displaying identified patient medical conditions for a patient in selectable, prioritized order according to medical severity via a remotely located client in communication with the data processing system. Surwit was relied on for disclosing displaying the identified patient medical conditions for each respective patient in selectable, prioritized order according to medical severity, and in response to selecting one of the identified medical conditions for a respective patient, displaying treatment options for treating the selected medical condition (Fig. 3 and col. 22 lines 1-6).

However, the Surwit patent is barred from being used as prior art under 35 U.S.C 103(c). According to 103(c), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section

102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. At page 17 of the Supplemental Appeal Brief filed on 18 February 2004, Applicant argues that Surwit cannot be relied on as prior art because Applicant's application and the Surwit patent are commonly owned by Healthware Corporation (presently ZyCare, Inc.). Because the Surwit patent is commonly owned and cannot be relied on as prior art, the Examiner respectfully submits that claims 19-28 are allowable.

The reasons for allowance of claims 19-28 (now renumbered claims 1-10) are the following: the feature of a remotely located data processing system configured to communicate with and receive data from the portable patient apparatus, where the remotely located data processing system comprises: computer code that displays identified patient medical conditions for a patient in selectable, prioritized order according to medical severity via a remotely located client in communication with the central data processing system; and computer code that displays treatment options for treating a selected medical condition for a patient are not disclosed by the prior art. The Examiner respectfully submits that upon performing an updated prior art search, the Bardy reference (6,384,203) was discovered. While Bardy discloses a system for prioritizing multiple health disorders by ordering each patient's pathophysiological status in a temporal sequence from least recent to most recent (col. 3 lines 7-57, col. 16 lines 29-37), Bardy fails to expressly disclose computer code that displays identified patient medical conditions for a patient in selectable, prioritized order according to medical

severity via a remotely located client in communication with the central data processing system, and computer code that displays treatment options for treating a selected medical condition for a patient. For these aforementioned reasons, claims 19-28 (now renumbered claims 1-10) are allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches a medical care support system (JP 2003030320A), an article discussing computer mapping in behavioral health care (Goknar), a system for automated collection and analysis of patient information retrieved from a medical device (6,607,485).
  
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. After April 13, 2005, the Examiner can be contacted at (571) 272-6767. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**7. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9306 or (703) 872-9326 [Official communications]

(703) 872-9327 [After Final communications labeled "Box AF"]

(703) 746-8374 [Informal/ Draft communications, labeled "PROPOSED" or "DRAFT"]

Art Unit: 3626

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7th Floor (Receptionist).

*CB*

CB

March 4, 2005

*Joseph Thomas*  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600